

R156. Commerce, Occupational and Professional Licensing.

R156-59. Professional Employer Organization Act Rules.

R156-59-101. Short Title.

These rules are known as the "Professional Employer Organization Act Rules".

R156-59-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 59, as used in Title 58, Chapters 1 and 59 or these rules:

(1) "Certified audit", as used in Subsection 58-59-302(6), and "audited financial statement", as used in Subsection 58-59-306(2)(b)(i), means performing inquiry and analytical procedures which provide a basis for expressing assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with the generally accepted accounting principles; and the issuance of a report on the financial statements stating that an audit was performed in accordance with the standards established by the American Institute of Certified Public Accountants.

(2) "Self-funded or partially self-funded insurance plan" as used in Subsection 58-59-302(7) means any plan of insurance or provision of an employee health benefits program where risk of loss is borne by the professional employer organization.

(3) "Certified public accountant" as used in Section 58-59-306 means a Utah licensed certified public accountant unless exempted under Subsection 58-26-9(1) of the Certified Public Accountant Licensing Act.

R156-59-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 59.

R156-59-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-59-302a. Qualifications for Licensure.

(1) In accordance with Subsection 58-59-302(5), the Division will permit an independent certified public accountant to certify in a form prescribed by the Division that the applicant has complied with the requirements set forth in Subsections 58-59-302(3) and (4).

(2) In accordance with Subsection 58-59-302(5), the Division shall require an independent certified public accountant to provide the following evidence of financial responsibility:

(a) a certification in a form prescribed by the Division that the PEO has paid all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums; and

(b) the PEO's audited financial statement for the year immediately preceding the date of the license application.

(3) In accordance with Subsection 58-59-302(7), the Division shall require:

(a) a licensed third party administrator to certify that the applicant is in compliance with the requirements set forth in Subsection 58-59-302(7)(b) and (d); and

(b) a qualified actuary who is a member in good standing of the American Academy of Actuaries to submit a statement of actuarial opinion certifying that the applicant is in compliance with the requirements set forth in Subsection 58-59-302(7)(a).

(4) In accordance with Subsection 58-59-302(9), responsible managers shall document the following education and experience requirements:

(a) an earned bachelors or post graduate degree in law, accounting, finance or business administration or other related educational program approved by the Division in consultation with the Board and has a minimum of two years of full time paid experience in law, accounting, finance, business administration, management, or other related education and experience approved by the Division in consultation with the Board; or

(b) graduation from high school or have a GED equivalent and have six years of full

time paid experience in accounting, finance, business administration, management, or other related experience approved by the Division in consultation with the Board.

(5) In accordance with Subsection 58-59-302(10), good moral character shall be established by evaluating the conduct of the officers, directors, responsible managers who have signatory authority over fiduciary funds or persons who have a controlling interest in the PEO.

(6) In accordance with Subsections 58-59-501(5) and 58-59-502(3), each applicant for licensure as a PEO shall submit a form of the contract to be used between the PEO and the employee and submit a form of the contract to be used between the PEO and the client company to whom leased employees are provided.

(a) The contract forms shall contain:

(i) the name and address of the PEO as filed with the Division of Corporations and Commercial Code and the name and address under which the company does business;

(ii) disclosure that the employee is under contract for the purpose of being leased to a client company;

(iii) disclosure of the identity of the entity from whom the employee will receive compensation for work performed;

(iv) disclosure of the total compensation, including all employee benefits, to which the employee will be entitled;

(v) representation by the PEO that it will pay or cause to be paid when due all amounts to which the employee is entitled or which are to be paid to others, including government agencies and insurance companies; and

(vi) disclosure of any other matter which is material in the employment of the employee by the PEO or in the leasing of the employee to a client company.

(b) The contract forms specified in Subsection (a) shall be accompanied by a letter from legal counsel for the PEO expressing a legal opinion that the contract forms comply with the contract standards set forth in Title 58, Chapter 59, and this section.

R156-59-302b. Change in Ownership or Change in Officers, Directors, Responsible Managers or Other Persons Who Have Controlling Interest - Reestablishment of Qualifications for Licensure.

(1) In accordance with Subsection 58-59-302(8), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of a criminal background check satisfactory to the Division within 10 days after the change.

(2) In accordance with Subsection 58-59-302(9), responsible managers shall require submission of evidence in a form prescribed by the Division that the new responsible manager has the education and experience requirements set forth in Subsection R156-59-302a(4) within 10 days after the change.

(3) In accordance with Subsection 58-59-302(10), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of evidence in a form prescribed by the Division that the new owner, officer, director, responsible manager or other persons having a controlling interest in the PEO is of good moral character as defined in Subsection R156-59-302a(5) within 10 days after the change.

R156-59-306. Financial Responsibility.

(1) In accordance with Subsection 58-59-306(2)(a), the quarterly reports prepared by an independent CPA shall be submitted in accordance with the following schedule:

(a) March 31 for the quarter ending December 31;

(b) June 30 for the quarter ending March 31;

(c) September 30 for the quarter ending June 30; and

(d) December 31 for the quarter ending September 30.

(2) Beginning September 30, 2001, in accordance with Subsection 58-59-306(2)(b)(ii), if the PEO is self-funded or partially self-funded:

(a) a third party administrator shall certify annually that the PEO is in compliance with Subsection 58-59-302(7)(b) and (d); and

(b) a qualified actuary who is a member in good standing of the American Academy of Actuaries shall submit annually a statement of actuarial opinion certifying that the PEO is in compliance with the requirements set forth in Subsection 58-59-302(7)(a).

R156-59-502. Process for Obtaining Prior Written Approval for Sales, Transfers or Entering Into Contracts which Commits the Licensee to Make Future Payments.

In accordance with Subsection 58-59-502(8), in order to obtain prior written approval from the Division for sales, transfers or entering into contracts which commits the licensee to make future payments, the PEO shall submit:

(1) an application for licensure, if the event or events listed in Subsection 58-59-502(8) results in or would require the creation of a new business entity; or

(2) an audited financial statement prepared by an independent certified public accountant stating that upon completion of the event or events listed in Subsection 58-59-502(8):

(a) the PEO will remain financially responsible as set forth in Subsection 58-59-306(2)(b)(i); and

(b) the PEO will have a minimum adjusted net worth of \$50,000 or 5% of the total adjusted liabilities, whichever is greater.

KEY: licensing, professional employer organization*

Effective September 18, 2000

Notice of Continuation January 27, 1998

58-1-106(1)

58-1-202(1)

58-59-101

**PROFESSIONAL EMPLOYER
ORGANIZATION ACT RULES**

R156-59

**Utah Administrative Code
Issued September 18, 2000**